

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LUIS PACHECO,
Plaintiff,

v.

AYALA, et al.,
Defendants.

Case No. [23-cv-06020-RFL](#)

ORDER OF DISMISSAL

Re: Dkt. No. 27

Luis Pacheco, a state prisoner, proceeding *pro se* and *in forma pauperis*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. On April 13, 2025, Plaintiff sent a letter to the Court seeking to drop the case because he cannot find an attorney to represent him and he may have to provide attorney fees for Defendants if he loses. (Dkt. No. 28 at 1). The Court construes the letter as a request for voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1). Under Federal Rule 41(a)(1), “a plaintiff has ‘an absolute right’ to voluntarily dismiss an action ‘prior to service by the defendant of an answer or a motion for summary judgment.’” *Kamal v. Eden Creamery, LLC*, 88 F.4th 1268, 1279 n.4 (9th Cir. 2023) (citation omitted). The dismissal may be with or without prejudice, but unless plaintiff’s notice of dismissal states otherwise, it is deemed to be without prejudice. *See* Fed. R. Civ. P. 41(a)(1)(B).

Here, Defendants did not file an answer and the motion for summary judgment was filed with the Court on April 18, 2025. While the summary judgment motion was docketed first on the Court’s electronic docket, a review of Plaintiff’s letter confirms that it was postmarked and sent to the Court prior to service of the summary judgment motion.

Pursuant to Rule 41(a), this case is DISMISSED without prejudice. The motion for summary judgment (Dkt. No. 27) is VACATED. The Clerk shall close the case.

IT IS SO ORDERED.

Dated: May 2, 2025

A handwritten signature in black ink, appearing to read 'R. Lin', is written above a horizontal line.

RITA F. LIN
United States District Judge